

FRANK FOGLIA AND NANCY FOGLIA, PARENTS OF FRANK
FOGLIA, A MINOR, DECEASED

NOVEMBER 4 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. EASTLAND, from the Committee on Claims, submitted the
following

REPORT

[To accompany H. R. 2244]

The Committee on Claims, to whom was referred the bill (H. R. 2244) for the relief of Frank Foglia and Nancy Foglia, parents of Frank Foglia, a minor, deceased, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

The facts will be found fully set forth in House Report No. 638, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report, and your committee concur in the recommendations of the House.

[H. Rept. No. 638, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 2244) for the relief of Frank Foglia and Nancy Foglia, parents of Frank Foglia, a minor, deceased, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line beginning with the word "Frank" after the word "to", strike out all of the bill through and including the words "Corps" on line 2, page 2, and insert in lieu thereof the language: "to Frank Foglia and Nancy Foglia, of Fairview, New Jersey, parents of Frank Foglia, a minor, deceased, the sum of \$5,983.35, in full settlement of all claims against the United States for the death of their son, Frank Foglia, a minor, and expenses incident thereto, resulting from personal injuries sustained while he was riding in a Civilian Conservation Corps truck near Preakness, New Jersey, on August 19, 1941."

The purpose of the proposed legislation is to pay to Frank Foglia and Nancy Foglia, of Fairview, N. J., the sum of \$5,983.35, in full settlement of all claims against the United States for the death of their son, Frank Foglia, a minor, and expenses incident thereto, resulting from personal injuries sustained while he was riding in a Civilian Conservation Corps truck near Preakness, N. J., on August 19, 1941.

STATEMENT OF FACTS

On August 19, 1941, Frank Foglia, 17 years of age, had been accepted for the Civilian Conservation Corps, and was en route to Camp S-54, Butler, N. J., to be enrolled. Foglia and 17 other selectees were being transported from Hackensack, N. J., to Camp S-54 in a Civilian Conservation Corps truck driven by Enrollee William H. Baker. A board of officers investigating the accident found that Baker had been drinking during the course of his trip from the camp into Hackensack to pick up the selectees, and he was intoxicated at the time the accident occurred. It had been raining and the accident occurred on the return journey at a point on the highway near Preakness, N. J., where the surface changed from concrete to macadam. Baker lost control of the truck when it skidded on the wet pavement. The rear end struck two transformer poles and Foglia was thrown out on the highway. He suffered a concussion, never regained consciousness, and died the next day. Baker was found to be intoxicated by the law-enforcement officers who investigated at the scene of the accident and was given a 60-day jail sentence.

The Federal Security Agency, under whose supervision the Civilian Conservation Corps operated at the time, admits the Government's liability, declares the claim meritorious, and recommends payment of a sum not in excess of \$5,000, plus funeral and medical expenses.

Your committee concur in the views of the Agency and, therefore, recommend favorable consideration of the proposed legislation, which would pay the parents of the deceased the sum of \$5,000 for the death of their son, plus \$983.35, the amount of funeral and medical expenses paid by them, as shown by receipted bills.

Appended hereto is the report of the Federal Security Agency, together with other pertinent evidence, all of which is made a part of this report.

FEDERAL SECURITY AGENCY,
Washington, May 14, 1943.

Hon. DAN R. MCGHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your request of April 1, 1943, for a report on H. R. 2244, a bill for the relief of Frank and Nancy Foglia, parents of Frank Foglia, a minor, deceased, and copies of relevant material in the files of this Agency.

H. R. 2244 would authorize the payment of \$10,000 to Frank and Nancy Foglia, parents of Frank Foglia, in settlement of their claims against the United States for damages for the death of Frank Foglia and expenses incident thereto.

The report of the investigating board of officers and other papers in the files of the Agency disclose that Frank Foglia was 17 years old, had been accepted for the Civilian Conservation Corps, and was en route to Camp S-54, Butler, N. J., to be enrolled. Foglia and 17 other selectees were being transported from Hackensack, N. J., to Camp S-54 in a Civilian Conservation Corps truck driven by Enrollee William H. Baker. It appeared during the investigation that Baker had been drinking during the course of his trip from the camp into Hackensack to pick up the selectees, and he was intoxicated at the time of the accident. It had been raining and the accident occurred on the return journey at a point on the highway where the surface changed from concrete to macadam. Baker lost control of the truck when it skidded on the wet pavement. The rear end struck two transformer poles and Foglia was thrown out on the highway. He suffered a concussion, never regained consciousness, and died the next day. Baker was found to be intoxicated by the law-enforcement officers who investigated at the scene of the accident and was given a 60-day jail sentence.

There seems to be no doubt but that the death of Foglia was caused by the misconduct and careless driving of Enrollee Baker. This claim, therefore, seems to me to be meritorious.

I have been advised by the Bureau of the Budget that the Congress and the administration have rather consistently adhered to the policy of providing not in excess of \$5,000, plus funeral and medical expenses in death cases through the medium of private relief bills, and that the enactment of the proposed legislation in its present form would not, therefore, be in accord with the program of the

President, but that it would not be in conflict therewith if revised to provide payment to the parents of the deceased enrollee of an amount not to exceed \$5,000 by reason of the death of their son and an additional reasonable amount for burial expenses.

Sincerely yours,

WATSON B. MILLER,
Acting Administrator.

IN THE MATTER OF THE DEATH OF FRANK FOGLIA, JR., CIVILIAN CONSERVATION
CORPS SELECTEE, ALSO KNOWN AS FRANK J. FOGLIA

1. Frank Foglia, Jr., a boy of the age of 17 resided with his father and mother at 314 Fifth Street, Fairview, N. J.

2. Previous to August 19, 1941, the date of the accident hereinafter referred to, the said Frank Foglia, Jr., made application to become a member of the Civilian Conservation Corps. His application was accepted by the Civilian Conservation Corps and he was ordered to report at Hackensack on the morning of August 19, 1941, for transportation by the Civilian Conservation Corps to the Civilian Conservation Corps camp in Butler, N. J. (Company 322, Camp S-54) where he would have been actually sworn in.

3. A Government truck driven by a Civilian Conservation Corps employee provided the transportation and while on the way to the camp and at approximately 11:30 a. m. at Hamburg Turnpike, in the vicinity of Preakness, N. J., the truck skidded on a wet pavement and the driver lost control, whereby the truck ran into and struck two transformer poles. The deceased selectee was pitched off the truck and because of his serious injuries removed to the Paterson General Hospital and died at 5:35 a. m. the next day. The truck bore license No. DA 50322 and the driver was William H. Baker, whose Civilian Conservation Corps number was (CC2-336395). The driver was under the influence of intoxicating liquor at the time of the accident and he was committed to jail. There has never been any dispute as to the fact that the death of the selectee resulted solely from the negligence of the Government employee driving the truck.

4. The facts are set forth in the report of the company commander, Rafael J. Miranda, of August 21, 1941, to the commanding general, Second Corps Area, office of the Civilian Conservation Corps executive, 39 Whitehall Street, New York City, as follows:

"1. On August 19, 1941, at 11:30 a. m. eastern standard time Selectee Frank Foglia and 17 other selectees were being brought to this camp from Hackensack, N. J., for processing. These men were riding in a stake body truck license DA 50322. At 11:30 a. m. eastern standard time, changing from concrete to macadam while traveling on Hamburg Turnpike in the vicinity of Preakness, N. J., the truck skidded on the wet pavement due to falling rain and the driver lost control of the vehicle. While skidding the truck struck two transformer poles, the left rear section being demolished. Selectee Foglia was pitched off the truck suffering a head injury. He was removed to the Paterson General Hospital and died at 5:35 a. m. eastern standard time on August 20, 1941. The truck was driven by Enrollee William H. Baker, CC2-336395 who was found to be under the influence of liquor and was committed to jail pending outcome of Foglia's injuries."

5. The Foglia parents retained the undersigned as their attorneys to represent them. A petition was filed in their behalf with the United States Employees' Compensation Commission, which claim was made for compensation as well as actual hospitalization and funeral expenses. The Commission in a letter dated November 24, 1941, denied any compensation or expenses in this language:

"The benefits of the Federal Employee's Compensation Act were made available to the enrollees of the Civilian Conservation Corps and their dependents by the act of Congress approved June 19, 1934, subject to the limitations and provisions of the act of Congress approved February 15, 1934.

"No evidence in this case clearly shows that at the time of his death, Mr. Foglia was not an employee of the United States nor an enrollee of the Civilian Conservation Corps. Under the circumstances, the case does not come within the scope of the Compensation Act and no benefits or compensation may be extended to anyone on account of the death of this decedent.

"The funeral bills submitted with your letter are returned herewith, as no part thereof may be paid by the United States Employee's Compensation Commission."

6. It is impossible to appeal from this decision because the statutes of the United States do not accord the right to an appeal from the decision of this Commission.

7. After much correspondence with various Government departments, the claim was referred to the Adjutant General of the Armory and payment thereof finally denied, in a letter dated September 4, 1942, from H. H. Rogers, claims reviewer, General Accounting Office, Washington, D. C., as follows:

"For your information it may be stated that examination of the record does not disclose any basis whereby favorable action could be taken in this matter.

"Respectfully,

"(Signed) H. H. ROGERS,
"Claims Reviewer."

8. This being a tort case it is firmly established that Congress has not provided any means whereby the Foglia family can seek any redress by legal procedure on their claim against the Government.

9. The following are the actual expenses incurred as the result of the death of the selectee:

McCorry Bros. (funeral), Cliffside Park, N. J.-----	\$548. 35
Fairview Cemetery Co. (plot), Fairview, N. J.-----	380. 00
Garden Florist (flowers), Fairview, N. J.-----	15. 00
Louis Scala (automobiles), Cliffside Park, N. J.-----	20. 00
Blum's Clothes Shop (clothes), Union City, N. J.-----	20. 00
Total-----	983. 35

On July 7, 1942, these bills in triplicate were mailed to headquarters, Second Corps Area, office of the Civilian Conservation Corps executive, 71 West Twenty-third Street, New York City.

10. The deceased selectee left surviving him either wholly or partially dependent upon him for support, now or in the future, his father, Frank Foglia, who is presently employed as a laborer and whose weekly earnings average \$30 and his mother, Nancy Foglia, who is a housewife and unemployed. Their present address is 314 Fifth Street, Fairview, Bergen County, N. J.

CHANDLESS, WELLER & KRAMER,
Attorneys of Frank and Nancy Foglia.

Received, \$20 for two cars, for funeral services, from Mrs. Frank Foglia.

LOUIS SCALA,
Cliffside Park, N. J.

STATEMENT

FRANK AND NANCY FOGLIA,
Fairview, N. J.:

Aug. 20, 1941 (date of purchase), plot 29-1-O-----	\$350
Aug. 23, 1941, interment of F. Foglia-----	30
Total-----	380
Aug. 20, 1941, paid-----	200
Aug. 29, 1941, paid-----	180

FAIRVIEW CEMETERY CO.,
Per M. J. SWEENEY, Bookkeeper.

GARDEN FLORIST,
Fairview, N. J., August 19, 1941.

Mrs. NANCY FOGLIA,
Fairview, N. J.

1 wreath No. 32 (gate ajar)-----	\$15
Paid in full (V. C.).	

CLIFFSIDE PARK, N. J., April 17, 1943.

Mr. FRANK FOGLIA,
Fairview, N. J.

To McCorry Bros., Dr., funeral directors, for the burial of Frank Foglia, August 23, 1943:

Complete funeral consisting of casket and concrete vault selected, embalming dressing and casketing, flowers on door and use of equipment, securing certificate and permits, drivers to assist as pallbearers, delivering vault to the cemetery, use of hearse and 1 limousine, personal services and assistants----- \$450. 00

Additional items not included:

2 limousines, 2 flower cars extra-----	40. 00
Solemn requiem mass offering-----	35. 00
Removal from Paterson Hospital-----	15. 00
Clothing needed supplied-----	5. 10
Fee for physician's insurance form-----	2. 25
1 copy of the death certificate-----	1. 00

Total-----	548. 35
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Received payment, August 29, 1941.

McCorry Bros.,
By C. L. McCorry.

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